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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LUC BEAUDOIN, SUZANNE L. ROCHFORD,
DOUG D. TALBOTT, ARN C. HYNDMAN, and
THOMAS J. STOVICEK

Appeal 2008-006146
Application 10/025,925¹
Technology Center 2100

Before JEAN R. HOMERE, DEBRA K. STEPHENS, and
JAMES R. HUGHES, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL²

¹ Filed on December 26, 2001. This application claims priority from provisional application 60/339,343, filed December 13, 2002. The real party in interest is Nortel Networks, Ltd. (App. Br. 1.)

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) (2002) from the Examiner's final rejection of claims 21 through 46. (App. Br. 1.)³ Claims 1 through 20 have been cancelled. (*Id.*) We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We affirm.

Appellants' Invention

Appellants invented a method and apparatus for representing and maintaining complex telecommunication network layouts from which desired network subsets are selected for display. (Spec. 1, ll. 4-6.)

Illustrative Claim

Independent claim 21 further illustrates the invention as follows:

21. A method for enabling differential visualization on a display of a plurality of aspects of a telecommunication network, said method comprising the steps of:

- presenting a background image representation of at least a first of the aspects of the telecommunication network, said first aspect being a physical network topology of the telecommunication network; and

- presenting a foreground image representation of at least a second of the aspects of the telecommunication network over the background image representation, said second of the aspects being a management view of the telecommunication network and being user-selectable.

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of unpatentability:

³ All references to the Appeal Brief are to the Appeal Brief filed on May 16, 2007, which replaced the prior Appeal Brief filed on March 8, 2007.

Bishop

5,729,250

Mar. 17, 1998

Richard A. Becker et al., *Visualizing Network Data*, IEEE Trans. on Visualization & Computer Graphics, Vol. 1, No. 1, Mar. 1995, at 16-28 (hereinafter “Becker”).

Kenneth C. Cox et al., *3D Geographic Network Displays*, Sigmond Record, Vol. 24, No. 4, Dec. 1996, at 1-19 (hereinafter “Cox”).

Rejections on Appeal

The Examiner rejects the claims on appeal as follows:

Claims 21 through 42, 44, and 46 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Becker.

Claim 43 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Becker and Bishop.

Claim 45 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Becker and Cox.

Appellants’ Contentions

Appellants contend that the Examiner construes independent claim 1 in an unreasonable manner that is not consistent with Appellants’ Specification. (Reply Br. 2-6.) In particular, Appellants argue that Becker’s disclosure of the background image of the United States (“U.S.”), including the location of nodes and links, does not teach “a physical network topology of the telecommunications network,” as recited in independent claim 1. (App. Br. 6; Reply Br. 3.) Appellants allege that Becker’s nodes are shown in the foreground rather than the background and, therefore, cannot be considered as part of the background image. (App. Br. 6-7; Reply Br. 4.) Further, Appellants contend that the present Specification defines topology as both the nodes and links interconnecting the nodes. (App. Br. 7.)

Appellants acknowledge that Becker teaches placing nodes on the map of the U.S., but argue that Becker's disclosure does not show the links interconnecting the nodes. (*Id.* at 7.) Thus, Appellants allege that Becker does not teach "a physical network topology," as claimed. (*Id.*) Appellants also contend that Becker's disclosure of colored lines amounts to one aspect of network performance and does not teach lines in the background that illustrate network topology. (App. Br. 7-8; Reply Br. 5.) Additionally, Appellants argue that Becker's disclosure of the amount of idle capacity on a link teaches attributes of the current network traffic, whereas the claimed invention calls for a "management view" of the network topology. (App. Br. 8.)

Examiner's Findings and Conclusions

The Examiner finds that Appellants' Specification does not explicitly define "a physical network topology" as having both nodes and links which are interconnected. (Ans. 16.) Therefore, the Examiner finds that Becker's disclosure of displaying an appropriate subset of data, which is based upon network geography/topology, teaches a select "physical network topology," as claimed. (*Id.*) The Examiner also finds that Becker's disclosure of nodes that have distinguishable visual characteristics (i.e. size, shape, and color) amount to overlapping nodes and, therefore, teach nodes on both the foreground and background of the U.S. map. (*Id.* at 17-19.) Additionally, the Examiner finds that "a management view" may be broadly, but reasonably construed as information utilized to manage a network, such as the available capacity on the network. (*Id.* at 19.) Therefore, the Examiner finds that Becker's disclosure of lines that represent a variety of statistics teaches "a management view," as claimed. (*Id.*)

II. ISSUE

Have Appellants shown that the Examiner erred in finding that Becker anticipates independent claim 1? In particular, the issue turns on whether Becker teaches:

(a) “a background image representation...being a physical network topology of the telecommunications network,” as recited in independent claim 1; and

(b) “a foreground image representation...being a management view of the telecommunications network,” as recited in independent claim 1.

III. FINDINGS OF FACT

The following Findings of Fact (“FF”) are shown by a preponderance of the evidence.

Becker

1. Becker generally relates to graphical tools for displaying network data and, in particular, to manipulation techniques that help to extract meaningful insights from the mass quantity of network data. (16: col. 1, ll. 34-37.) In particular, Becker discloses three graphical tools for visualizing network data collectively referred to as SeeNet. (*Id.* at col. 2, ll. 33-34.) Becker discloses that the visualization techniques pertain to static display, interactive controls, and animation. (*Id.* at ll. 34-36.)

2. Becker discloses nodemaps which display node-oriented data by showing a symbol at each node on the map, with the corresponding visual characteristics such as size, shape, and color. (18: col. 1, ll. 13-18.)

3. Becker’s figures 2 through 5 depict static displays or maps that show the spatial relationship between nodes. (19: col. 1, ll. 17-19.) Becker

discloses dynamic parameter adjustment. (*Id.* at col. 2, ll. 20-21.) In particular, the geography/topology parameter allows display of an appropriate subset of data, based upon network geography or topology. (*Id.* at ll. 44-46.) Becker discloses accomplishing geographic restriction by zooming in on a particular rectangular sub-region within the network. (*Id.* at ll. 46-48.)

4. Becker discloses a color parameter that entails utilizing color to encode the statistic values on a display and, further, to highlight important data. (20: col. 1, ll. 41-43.) In particular, Becker discloses that color is used in a nodemap to encode differences in aspect ratios for rectangles, as a threshold for circles, and to highlight important differences. (*Id.* at ll. 50-52; col. 1, 57-col. 2. 1. 1.)

IV. ANALYSIS

35 U.S.C. § 102(b) Rejection

Claim 1

Independent claim 21 recites, in relevant part, 1) “a background image representation...being a physical network topology of the telecommunications network;” and 2) “a foreground image representation...being a management view of the telecommunications network.”

We first consider the scope and meaning of the terms “a background image representation,” and “a foreground image representation,” which must be given the broadest reasonable interpretations consistent with Appellants’ disclosure, as explained in *In re Morris*, 127 F.3d 1048 (Fed. Cir. 1997):

[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification.

Id. at 1054. *See also Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989) (stating that “claims must be interpreted as broadly as their terms reasonably allow.”)

Appellants’ Specification states that:

[t]he base mode representation 18a is presented on a background 24 of the GUI 12 and can be used to portray a visual representation of the selected actual telecommunication network layout 3....

(Spec. 11, ll. 24-26.)

Further, our reviewing court states, “the ‘ordinary meaning’ of a claim term is its meaning to the ordinary artisan after reading the entire patent.”

Phillips v. AWH Corp., 415 F.3d 1303, 1321 (Fed. Cir. 2005).

Upon reviewing Appellants’ Specification, we fail to find a definition for the claimed terms “a background image representation” and “a foreground image representation.” Therefore, we construe the cited terms consistent with their ordinary meaning as provided in a dictionary. The term “background” is defined as “the part of a scene or view furthest from a viewer; an inconspicuous or unobtrusive position.”⁴ Further, the term “foreground” is defined as “the part of a scene situated towards the front or nearest to the viewer; a conspicuous or active position.”⁵ Since both the

⁴ *See* Collins English Dictionary, HarpersCollins Publishers 2000, retrieved from <http://www.credoreference.com/entry/hcengdict/background>.

⁵ *See* Collins English Dictionary, HarpersCollins Publishers 2000, retrieved from <http://www.credoreference.com/entry/hcengdict/foreground>.

Examiner and Appellants have not cited any authority as support for construing these terms, we will apply the definitions offered above. We construe “a background image representation” as a visual representation of an image situated furthest from a viewer, or an inconspicuous view. Similarly, we construe “a foreground representation” as a visual representation of an image situated nearest to a viewer, or the most conspicuous view.

As detailed in the Findings of Fact section, Becker discloses graphical tools, collectively referred to as SeeNet, that display a static network. (FF 1.) In particular, Becker discloses a nodemap that utilizes symbols to depict the nodes in the static network. (FF 2.) Becker further discloses that each symbol has corresponding visual characteristics which help display certain parameters. (FF 3-4.) Becker discloses that the symbols can be adjusted utilizing the geography/topology parameter, which displays an appropriate subset of the static network based upon network geography or topology. (FF 3.) Becker also discloses that symbols can be adjusted utilizing the color parameter, which highlights important differences between the various nodes in the static network. (FF 4.)

We find that Becker’s disclosure teaches displaying aspects of a network utilizing a map, which depicts nodes or symbols that can be adjusted accordingly. In particular, we find that Becker’s disclosure of adjusting the symbols in order to display the network’s geography or topology amounts to displaying a visual representation of an image situated furthest from a viewer, or an inconspicuous view of a physical network topology. Therefore, consistent with the definition adopted above, Becker’s

disclosure of an inconspicuous view of physical network topology teaches “a background image representation...being a physical network topology of the telecommunications network,” as recited in independent claim 1.

Further, we find that Becker’s disclosure of utilizing color to highlight the important differences between various symbols amounts to coloring selected symbols in order to display a visual representation of an image situated nearest to a viewer, or the most conspicuous view of the physical network topology. Therefore, consistent with the definition adopted above, Becker teaches “a foreground image representation...being a management view of the telecommunications network,” as recited in independent claim 1. It follows that Appellants have not shown that the Examiner erred in finding that Becker anticipates independent claim 1.

Claims 22 through 42, 44, and 46

Appellants do not provide separate arguments for patentability with respect to independent claims 35 and 44, and dependent claims 22 through 34, 36 through 42, and 46. Therefore, we select independent claim 1 as representative of the cited claims. Consequently, Appellants have not shown error in the Examiner’s rejection of independent claims 35 and 44, and dependent claims 22 through 34, 36 through 42, and 46, for the reasons set forth in our discussion of independent claim 1. *See* 37 C.F.R. § 41.37(c) (1)(vii).

35 U.S.C. § 103(a) Rejection

Claims 43 and 45

Appellants offer the same arguments set forth in response to the anticipation rejection of independent claim 1 to rebut the obviousness

rejection of dependent claims 43 and 45. (App. Br. 8; Reply Br. 6.) We have already addressed these arguments in our discussion of independent claim 1, and we found them unpersuasive. Consequently, Appellants have not shown that the Examiner erred in concluding that dependent claim 43 is unpatentable over the combination of Becker and Bishop, and dependent claim 45 is unpatentable over the combination of Becker and Cox.

V. CONCLUSIONS OF LAW

1. Appellants have not shown that the Examiner erred in rejecting claims 21 through 42, 44 and 46 as being anticipated under 35 U.S.C. § 102(b).
2. Appellants have not shown that the Examiner erred in rejecting claims 43 and 45 as being unpatentable under 35 U.S.C. § 103(a).

VI. DECISION

1. We affirm the Examiner's decision to reject claims 21 through 42, 44, and 46 as being anticipated under 35 U.S.C. § 102(b).
2. We affirm the Examiner's decision to reject claims 43 and 45 as being unpatentable under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

Vsh

Appeal 2008-006146
Application 10/025,925

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